



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,156	11/06/2000	Vivian A. Schramm	MRS-015U	8663
52966	7590	05/19/2009		
Michael R. Schramm 350 West 2000 South Perry, UT 84302			EXAMINER WEINSTEIN, STEVEN L.	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			05/19/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mikeschramm@besstek.net

mschramm@axialbiotech.com

Office Action Summary

Application No.

09/707,156

Applicant(s)

SCHRAMM ET AL.

Examiner

Steven L. Weinstein

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2009 and 06 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Claims 1-14 and 21-26 are rejected under 35 U.S.C. 112 first paragraph for containing New Matter and being based on a non-enabling disclosure.

The recitations that the handle includes a plug comprised of eraser material plug is seen to be New Matter for the reasons detailed in the last Office action mailed 11/6/08. That is, as disclosed, the specification does not necessarily and inherently support the recitation that the plug comprises eraser material. It is not seen that the specification is clear as to what it is that "may be used as an eraser" (page 7, para. 2). The sentence in the specification recites that the mounting hole step is capable of enabling a user to mount holder/plug to a pencil "or the like object" and "may" be used as an eraser after using holder/plug with assembly. The specification does not make it clear what may be used as an eraser. What is "or the like"? In what way is the other object "like" a pencil – e.g., size or shape or function? As broadly disclosed, the object that may be used as an eraser could be the pencil itself or an eraser could be mounted in the mounting hole of the holder/plug. The recitation that the plug is comprised of eraser material is therefore not necessarily and inherently supported by the specification as originally filed. Also, the various length/volume recitations now added to the claims 1,8 and 21 are also not necessarily and inherently supported by the specification as originally filed. Applicants, in the remarks, urge that the drawings support such recitations as the volume of the container occupied by the candy is no more than half of the container volume minus the funnel volume; that the volume of the container occupied by the candy is no more than half of the container volume, and that the gap defines a distance between the funnel second open end and the candy article that is at

least half as large as any dimension of said candy article. This urging is not convincing. none of these spatial relationships are disclosed in words in the specification and it is not seen that the figures can be used to support spatial, including volumetric, relationships between elements.

Claims 1-14 and 21-26 are rejected using Product Alert (3/23/98) as the primary reference. That is, claims 1-4 and 21-26 are rejected under 35USC103(a) as being unpatentable over Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the references labeled exhibits A,B,D,F and G, Baker (WO 00/19803), Coleman ('884), Hoeting et al ('870) and applicants' admission of the prior art, in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174), Ciffo (2,917,766), Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), for the reasons fully and clearly set forth in the Office action mailed 11/6/08, and further in view of Keeran (1,432,468) and Sanchez (5,951,184) and further in view of Vogelsang (4,522,523) and Manzone (4,522,523).

As detailed previously, it would have been obvious to modify the combination and substitute one conventional lid material for another conventional lid material, for its art recognized and presumably applicants intended function. As for the recitation of the handle and plug/lid being adjustable, it is noted that the handle and lid structure of Ciffo, as further evidenced by Vogelsang and Manzone, would have been capable of being adjusted, at least to some degree, which is all the claims recite in this regard. Claims

1,8 and 21 now recite various dimensional relationships between the handle, plug and candy relative to their volumes. The particular dimensional/volumetric relationships between the various elements are seen to have been an obvious result effective variable, routinely determinable, and an obvious matter of choice. The art taken as a whole disclose various product containing container structures that include an anti-spill funnel as well as a dipable device to be inserted in the container to associate some of the contents of the container with the dipping device to remove a portion of the contents from the container, and wherein the dipping device is separate from or associated with a lid for the container. The containers of Ciffo, Price, Schramm ('046), McCombs, Corteggiani et al, Pilot Ink and Vogelsang all disclose container/contents/dipper device arrangements wherein the contents are capable of flowing around substantially the whole part of the dipper device one wishes to have the contents applied thereto. It is noted that the rejection is proper, and the references are all properly combinable because the references are all directed to either the problem of providing non-spillable containers and/or containers for dipping a dipper element into a container to associate the contents of the container with the dipper element to remove a portion of the contents from the container. It is also noted that applicants disclosed method of associating the candy article with the particulate substance is by shaking the container.

Claims 1-14 and 21-26 are also rejected under 35 U.S.C. 103(a) using Price as the primary rejection. That is, claims 1-14 and 21-26 are rejected under 35USC103(a)

as being unpatentable over Price (3,840,678), as further evidenced by Hunter (GB '356), Williams ('174), Ciffo (2,917,766), Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the references labeled exhibits A,B,D,F and G, Baker (WO 00/19803), Coleman ('884), Hoeting et al ('870), and applicants' admission of the prior art, for the reasons fully and clearly set forth in the Office action mailed 11/6/08, and further in view of Keeran (1,432,468) and Sanchez (5,951,184) and further in view of Vogelsang ('523) and Manzone who are applied for the reasons given above.

All of applicants remarks have been fully and carefully considered but are not found to be convincing for the reasons of record and the remarks made above in the body of the rejection. In further response to applicants urging that the recitation that the plug comprises eraser material is not New Matter, The previous Office action did not suggest that the step could be the eraser, but rather that an attached pencil or an eraser mounted in the hole could be the eraser. Applicants urge that none of the prior art disclosed a spill resistant container that was specifically adapted to allow a lollipop to be inserted into a container having a funnel, to coat the lollipop with a particulate candy substance, and remove the coated lollipop from the container via the funnel, all without spilling any of the particulate candy substance contained within the container. In response, it is noted that patentability is predicated on what the art taken as a whole

teaches and not necessarily on what any one reference teaches. Also, the Board of Appeals has already affirmed the decision that the structural elements listed, are not patentable. As for the urging that the particulate product would somehow cause problems not associated with a liquid, this urging, too, is not convincing, since the recited dimensional relations would be routinely determinable. Obviously, if one wanted to dip a candy into a particulate container to coat the candy, which would obviously provide sufficient resistance due to its solid nature, one would have to shake the container and provide the appropriate dimensions to allow the particulate to access the surfaces of the candy. It is noted that, contrary to the assertion that the particulates and a liquid are substantially different, they are not that different since the access problem would exist for the liquid product as well, when the liquid contents of the container got sufficiently low that the dipping tool would either not reach the contents so the container would have to be shaken or the dipping tool would be designed/dimensioned to reach the bottom of the container.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 09/707,156
Art Unit: 1794

Page 8

/Steve Weinstein/
Primary Examiner, Art Unit 1794